2026:AHC:129761-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 6851 of 2025

State of U.P. .....Revisionist(s)

Versus

Nawab Singh Yadav and others .....Opposite Party(s)

Counsel for Revisionist(s)	:	Patanjali Mishra
Counsel for Opposite Party(s)	:	Akshay Pratap, Amit Kumar Pandey, Vijit Saxena

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Reserved

Court No. – 2 **A.F.R.**

HON'BLE J.J. MUNIR, J.
HON'BLE TARUN SAXENA, J.

(DELIVERED BY : J.J. MUNIR, J.)

1. This criminal revision has been preferred by the State assailing an order of Ms. Shraddha Bhartiya, the then Chief Judicial Magistrate, Kannauj, dated 20.09.2025, declining to take cognizance of the offence on the basis of a charge-sheet submitted by the Police in Case Crime No. 361 of 2025, under Sections 351(3), 224, 132, 49, 232, 61(2), 308 (7) and 111 of the Bharatiya Nyaya Sanhita, 2023 (for short, BNS), Police Station Kotwali, District Kannauj, registered as Miscellaneous Case No. 1058 of 2025, besides issuing other directions.

2. A First Information Report giving rise to Case Crime No. 681 of 2025 under Section 76 BNS and Sections 7/8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act, for short) was

lodged formally in the name of Arvind, the father of the minor victim, but actually by the victim herself, a girl, who shall be called A.

3. It is said in her FIR by A that she is fifteen years old, a resident of Binaura Rampur, Police Station Tirwa, District Kannauj. On 11.08.2024, she had accompanied her aunt (*bua*) Pooja Tomar to Lucknow and they returned to Tirwa from Lucknow at 11 O'clock in the night. They then boarded an auto-rickshaw and went to *Chandan Mahavidyalaya*, where they met Nawab Singh Yadav. Nawab Singh Yadav promised a job to the victim in the medical college and it is for the said purpose they were called to the *Chandan Mahavidyalaya*. During this time, when her aunt (*Bua*) went to the bathroom, Nawab Singh Yadav took off the victim's clothes, a fact she reported to her aunt immediately. Her aunt called the Police at Dial 112 Facility. It is also reported that Nawab Singh Yadav touched the victim's breast. Necessary action in the matter, after registration of the crime, was requested.

4. The Investigating Officer, during the course of investigation, had the statement of the victim recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (‘BNSS’ for short) before the learned Judicial Magistrate and, in that statement, the allegation of rape surfaced against the accused Nawab Singh Yadav. Further on, during investigation, the victim was medically examined by Dr. Swastika Shalini on 13.08.2024, who prepared a medico-legal examination report. A DNA sample of the victim of rape for the purpose of verification was sent to the Forensic Science Laboratory, UP, Agra.

5. The Forensic Science Laboratory submitted their report dated 31.08.2024, where exhibits nos. 1 to 10 belonged to the victim, whereas those numbered as exhibits nos. 11 to 17 were from the accused, Nawab Singh Yadav. It was reported that the biological material, found on exhibits nos. 6 and 7 belonging to the victim, was of male origin and was similar to exhibit no. 17, that is to say, Nawab Singh Yadav's blood. Likewise, there were similarities found which established, *prima facie,* through the material carrying the DNA, a case of rape.

6. The Investigating Officer, according to the State's case, carried out an extensive and fair investigation and after collecting cogent material, including the statement of the victim recorded under Sections 180 and 183 BNSS, call detail records, video footage, bank statements, DNA reports and other relevant material, submitted a charge-sheet against opposite party no. 1 and co-accused Pooja Tomar for offences punishable under Sections 65(1), 115(2), 351(3), 61(1) and 238(b) BNS and Sections 3/4(2), 17 and 18 POCSO Act, whereas that against opposite party no. 2 under Section 238(b) BNS. The charge-sheet is one dated 19.09.2024. The trial commenced as Sessions Trial No. 1006 of 2024, before the learned Special Judge (POCSO Act), Kannauj.

7. In the said case, Dr. Swastika Shalini, who medically examined the victim, was summoned by the Trial Judge to testify before him. The witness, who is a government employee, was to appear before the Trial Judge in discharge of her official duties, but was harassed by the accused in the present case in order to suborn her and make her testify in his

favor. The aforesaid witness, Dr. Swastika Shalini, entered the witness box in Sessions Trial No. 1006 of 2024 arising out of Case Crime No. 681 of 2024, on 19.03.2025, as PW-11. She was threatened by the accused and was told that after release of opposite party no. 1 from jail, three persons would be done to death. With regard to crime committed against her on that day, an FIR was registered on 20.05.2025 as Case Crime No. 361 of 2025 under Sections 224, 132, 49, 232, 61(2), 351(3) BNS and four named accused, including opposite party nos. 1 and 2.

8. What the revisionist further says is that on 19.03.2025, the first informant had earlier made a complaint before the Superintendent of Police on 23.03.2025. On the said complaint, a preliminary inquiry was conducted by the then Circle Officer, City, Kannauj, who submitted his report dated 12.04.2025. The legal opinion on the aforesaid report was sought from the In-charge, Joint Director (Prosecution), who submitted a report that from the perusal of material, offences punishable under Sections 351(3)/224/132/49/232 BNS are *prima facie* made out.

9. In his report, the Circle Officer, City, had recommended registration of an FIR in the present case. On the basis of the inquiry report, the Superintendent of Police, Kannauj, *vide* order dated 20.05.2025, directed the Station House Officer, Police Station Kotwali, District Kannauj, to register an FIR in the present case. It is, in this manner, that the FIR, giving rise to the present crime, was registered on 20.05.2025. After a thorough investigation into the crime, a charge-sheet against opposite party no. 1 was submitted on 11.07.2025 for offences

punishable under Sections 351(3), 224, 132, 49, 234, 61(2), 308(7) and 111 BNS. The investigation, as regards the other co-accused, remained pending. The aforesaid charge-sheet was forwarded to the Circle Officer, City, who put up objections and directed the Investigating Officer to conduct investigation on the points raised.

10. The Investigating Officer then proceeded with the investigation again and found that there was no CCTV camera installed in the official accommodation of the first informant. He was told by the first informant and her husband that at the time of the incident, nobody else was present in the house and, as such, there was no other witness of the incident. The Investigating Officer attempted to interrogate some persons in the hospital premises, but no one cooperated.

11. On 31.08.2025, the Investigating Officer again attempted to interrogate some independent witnesses from the hospital premises such as Manjesh Kumar, Cleaner Supervisor of the District Hospital. Manjesh Kumar stated that he had heard that the first informant of the present case was threatened in order to compel her to testify in favor of opposite party nos. 1 and 2 and, thereafter, an SCD 18 dated 31.08.2025 was recorded, substantiating the earlier charge-sheet. The investigation regarding the other two co-accused, Kishore Dohre and Pooja Tomar, was pending. The charge-sheet dated 11.07.2025 and, subsequent leafs of the case diary, were submitted before the Presiding Officer, that is to say, the learned Chief Judicial Magistrate, Kannauj, on 02.09.2025. Later on, this case was numbered as Miscellaneous Case No. 1058 of 2025 in

the Court of the Chief Judicial Magistrate, Kannauj. The learned Chief Judicial Magistrate, *vide* order dated 20.09.2025, declined to take cognizance of the offences mentioned in the charge-sheet and dismissed Miscellaneous Case No. 1058 of 2025. Aggrieved by the said order, the present revision has been preferred by the State.

12. We have heard Mr. Manish Goyal, learned Additional Advocate General assisted by Mr. Rupak Chaubey, learned Counsel for the revisionist, Mr. Vijit Saxena, learned counsel on behalf of opposite party nos. 1 and 2 and Mr. Amit Kumar Pandey, learned Counsel on behalf of opposite party no. 3 and perused the record, including the order impugned.

13. The thrust of Mr. Goyal's submission, in support of this revision, is that the learned Magistrate, while passing the impugned order, has scripted thirty one pages going into the details of collection of evidence and analyzing its worth as if holding a mini trial. He submits that at the stage of cognizance, the learned Magistrate is only required to apply his judicial mind to the material on record and, if a *prima facie* case is made out, the Magistrate is obliged to take cognizance and issue process. The learned Magistrate cannot sift through evidence, appreciating various aspects thereof at the stage of taking cognizance.

14. Learned Counsel, Mr. Vijit Saxena, appearing for opposite party no. 1 and Mr. Amit Kumar Pandey, learned Counsel appearing for opposite party no. 3, have supported the order and said that the material

collected being all fabricated and the investigation done in an unfair manner, the learned Magistrate has rightly refused to take cognizance.

15. Elucidating on the submissions, learned Counsel for the opposite party have drawn the attention of the Court to the fact that the learned Magistrate has refused to take cognizance on ground that remand of opposite party nos. 1 and 2 was never secured by the Police in the present crime and without securing a remand in the crime, a charge-sheet has been submitted.

16. Learned Counsel for the opposite party have also drawn the Court's attention to the remarks of the learned Magistrate that the first and second opposite parties' remand was sought in another case from the learned Special Judge (Gangsters Act), without bringing to notice of the learned Judge the fact that the present crime was pending before the learned Chief Judicial Magistrate and after that remand, from the learned Special Judge (Gangsters Act), statements under Section 180 BNSS, relating to the present crime, have been recorded. There are other remarks of the Magistrate to reach her conclusions that have been highlighted during the hearing by the learned Counsel appearing for the opposite party.

17. A perusal of the impugned FIR indeed shows many remarks in the first part relating to the irregularities in remand which have little to do with the principle issue if, from the material collected, a *prima facie* case, worth taking cognizance, is made out.

18. In the next lap of the order impugned, we find that the addition of Sections by the Police in the charge-sheet have been commented upon by the learned Magistrate as ones not supported by the FIR, the statements and those additionally recorded during investigation. There is a remark that this is indicative of poor forensic knowledge on the part of the police officers requiring training. It may be so, but, at the stage of taking cognizance, we are of opinion that these remarks were not required.

19. It is also remarked that the concerned Investigating Officer, the Station House Officer and the Circle Officer, City, have included an offence in the FIR under Section 232 BNS but violating, as they have done, the mandatory provisions of Section 215 BNSS, which reveals non-application of mind, negligence in performance of duties and violation of the mandatory provisions of the law. It is then said in the order impugned that during investigation Section 308(7) BNS and extortion have been noted to be continuously committed by the accused and, on its basis, they have added Section 111 BNS to the offences charged, whereas the offence under Section 308(7) BNS falls under Chapter XVII of the BNS, which relates to crimes against property.

20. It is also remarked in that connection that there is nothing to show that any attack or any criminal force was used *vis-a-vis* the informant by the accused or a criminal conspiracy amongst the accused proven from the evidence. It is also said that there is no such allegation in the FIR as well. It is, therefore, submitted that the basis on which the charge-sheet

has been filed, while ignoring the contents of the FIR and the statements recorded during the investigation, is unclear. This reflects a lack of proper forensic and understanding on the part of the investigating police officers. There is also a finding to the effect that it is to be noted that the FIR was lodged on 20.05.2025. The statements of the informant and Dr. Ravindra Kumar recorded in CD-1 on 20.05.2025 at pages nos. 16 and 17, whereas additional statements were recorded one and a half months later in CD-8 dated 06.07.2025, and, therefore, the fact about the accused extending threats surfaced one and a half months later through the additional statements. There are similar remarks touching upon the merits of the material collected in support of the prosecution case, as though the learned Magistrate had undertaken an appreciation of the evidence at the pre-trial stage, apart from making adverse observations regarding the forensic knowledge of the investigating officers.

21. What is required to be done at the stage of taking cognizance is, by far well-settled in the law and it is certainly not that what the learned Magistrate has done while passing the order impugned. In this connection, reference may be made to **Kamal Shivaji Pokarnekar v. State of Maharashtra and others (2019) 14 SCC 350**, In **Kamal Shivaji Pokarnekar** (*supra*), it has been observed:

> "3. The trial court recorded the statement of the husband of the appellant and directed issuance of process to the respondents. The respondents filed a revision challenging the issuance of process against them which was dismissed. The High Court allowed the writ petition filed by the respondents, holding that the dispute is of a civil nature, and criminal proceedings against the respondents would be an abuse

of the process of law. The High Court recorded a finding that the disputed document cannot be stated to be a sham document, as Shamrao during his lifetime stated on oath that he had handed over the possession of the land to the respondents. The submission made on behalf of the respondents that the matter is entirely of a civil nature was accepted by the High Court.

4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not."

(Emphasis by Court)

22. The principle was earlier laid down by a three Judge Bench of the Supreme Court in **Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424.**

23. A reference, in this connection, may also be made to **Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada, (1997) 2 SCC 397,** where it was observed:

"14.....It is fairly settled legal position that at the time of taking cognizance of the offence, the Court has to consider only the averments made in the complaint or in the charge-sheet filed under Section 173, as the case may be. It was held in *State of Bihar v. Rajendra Agrawalla* that it is not open for the Court to sift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made out for proceeding further in the matter. It is equally settled law that it is open to the Court, before issuing the process, to record the evidence and on consideration of the averments made in the complaint and the evidence thus adduced, it is required to find out whether an offence has been made out. On

> finding that such an offence has been made out and after taking cognizance thereof, process would be issued to the respondent to take further steps in the matters. If it is a charge-sheet filed under Section 173 of the Code, the facts stated by the prosecution in the charge-sheet, on the basis of the evidence collected during investigation, would disclose the offence for which cognizance would be taken by the court to proceed further in the matter. Thus it is not the province of the court at that stage to embark upon and sift the evidence to come to the conclusion whether offence has been made out or not. The learned Judge, therefore, was clearly in error in attempting to sift the evidence with reference to the averments made by the respondent in the counter-affidavit to find out whether or not offence punishable under Section 406 IPC had been made out."

24. The other point that was argued by Mr. Goyal is also well settled in law. He has objected to the fact that whereas the accused were heard at the stage of taking cognizance, a procedure, wholly impermissible in law, the impugned order has been passed by the learned Magistrate without issuing notice to the informant or hearing her which is mandatory because, by the refusal of cognizance, proceedings of the case launched by her would terminate and it is she who is the person aggrieved by this course of action.

25. We agree with the aforesaid submission of Mr. Goyal as well. In this connection, reference may be made to a three Judge Bench decision of the Supreme Court in **Bhagwant Singh v. Commissioner of Police and another, (1985) 2 SCC 537,** where it has been held:

> "4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been

committed by a particular person or persons and in such a case. the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly of in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section

> 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

26. In this case, it is true that no notice was issued to the informant and the Magistrate proceeded to refuse cognizance and terminated the proceedings, thus prejudicing the informant's interest without hearing her. So far as the remarks against the police officers are concerned, we are of opinion that since the order impugned is itself not sustainable, no useful purpose would be served by examining the wisdom of the learned Magistrate's remarks.

27. Upon a perusal of the police report, together with the case diary and the material collected during investigation, it is a clear case where the order refusing cognizance has been made by the learned Magistrate committing a manifest error of law in embarking upon a mini trial as if it were, to find out the truth of the allegations. The stage of trial is well recognized in criminal procedure and that certainly had not arrived to require the Magistrate to venture into an analysis of all the material that she has done. A case, *prima facie*, worth proceeding is clearly made out and this is all that is required at the stage of taking cognizance.

28. In the result, this petition **succeeds** and is **allowed**. The impugned order dated 20.09.2025, passed by the learned Chief Judicial Magistrate, Kannauj in Miscellaneous Case No. 1058 of 2025 is hereby **set aside** and the matter stands restored to the files of the Chief Judicial Magistrate, Kannauj for making fresh orders on the police report, bearing in mind the remarks in this judgment.

(Tarun Saxena, J) **(J.J. Munir, J)**

July 01, 2026
Prashant D.